

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**IN RE
VITAMIN C ANTITRUST LITIGATION**

This Document Relates To:

**ANIMAL SCIENCE PRODUCTS, INC. and
THE RANIS COMPANY, INC.**

Plaintiffs,

- v. -

**HEBEI WELCOME PHARMACEUTICAL CO.
LTD.; et al.,**

Defendants.

MASTER FILE 06-MD-1738
(DGT)(JO)

Case No. CV 05-453 (DGT)(JO)

**DECLARATION OF ANNABELLE
CHAN IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, FOR
DETERMINATION OF FOREIGN
LAW AND ENTRY OF JUDGMENT
PURSUANT TO RULE 44.1, FED. R.
CIV. P.**

ANNABELLE CHAN, pursuant to 28 U.S.C. § 1746, declares and states as follows:

1. I am an attorney at law admitted to practice before this Court, and am associated with the law firm of Orrick, Herrington & Sutcliffe LLP, counsel for defendant Jiangsu Jiangshan Pharmaceutical Co., Ltd.
2. Attached hereto as Exhibit 1 is a true and correct copy of the Brief Of *Amicus Curiae* The Ministry Of Commerce Of The People's Republic Of China In Support Of Defendants' Motion To Dismiss The Complaint, filed September 22, 2006 (D.E. 69).
3. Attached hereto as Exhibit 2 is a true and correct copy of the September 29, 2008 letter to the Court from China's U.S. Counsel (D.E. 331).
4. Attached hereto as Exhibit 3 is a true and correct copy of the Statement in *In re Vitamin C Antitrust Litig.* dated June 9, 2008, submitted by the Ministry of Commerce of the People's Republic of China (D.E. 306).

5. Attached hereto as Exhibit 4 are true and correct copies of the English and Chinese versions of the Report of Professor Shen Sibao, dated February 19, 2009.
6. Attached hereto as Exhibit 5 is a true and correct copy of the Report of Professor James B. Speta, dated February 20, 2009.
7. Attached hereto as Exhibit 6 is a true and correct copy of Plaintiffs' Third Amended Complaint.
8. Attached hereto as Exhibit 7 is a true and correct copy of an article by Yong Huang, titled *Pursuing the Second Best: The History, Momentum, and Remaining Issues of China's Anti-Monopoly Law*, 75 Antitrust L.J. 117 (2008).
9. Attached hereto as Exhibit 8 is a true and correct copy of Xian Fa [Constitution of the People's Republic of China] (2004) (P.R.C.). An English translation, available at http://english.gov.cn/2005-08/05/content_20813.htm (last visited August 25, 2009), also is attached.
10. Attached hereto as Exhibit 9 is a true and correct copy of an article by Li Lanqing, titled *Problems of the Reform of 1988 Foreign Trade Regime*, published in Research of Macro Economy (1987). A certified English translation also is attached.¹
11. Attached hereto as Exhibit 10 is a true and correct copy of a document titled *Minister Wu Yi's Comments on the Reform of Import and Export Chambers of Commerce*, Xu Guomin, Machinery Electronic Products Market (1994), Issue 10. A certified English translation also is attached.

¹ This declaration refers to the titles of documents as they were translated by Professor Shen in the English version of his report, which is appended hereto as Exhibit 4. In some instances there are minor differences between Professor Shen's translations of document titles and the attached certified translations; however, these differences are not material.

12. Attached hereto as Exhibit 11 is a true and correct copy of an excerpt from a book by Richard J. Pierce, Jr., titled *Economic Regulation: Cases and Materials* (1994).

13. Attached hereto as Exhibit 12 is a true and correct copy of an article by Bruce M. Owen, *et. al.*, titled *China's Competition Policy Reforms: The Anti-Monopoly Law and Beyond*, 75 Antitrust L.J. 231 (2008).

14. Attached hereto as Exhibit 13 is a true and correct copy of a document produced in this litigation, titled Provisions on Strengthening the Coordination and Regulation of Export Commodities, MOFTEC, 1991, para. 1. A certified English translation provided by Plaintiffs also is attached.

15. Attached hereto as Exhibit 14 is a true and correct copy of a document produced in this litigation, titled The State Council's Decision on Several Matters Concerning Further Reforming and Perfecting the Foreign Trade System (executed on December 9, 1990, issued on January 1, 1991), Guo Fa No. 70. A certified English translation provided by Plaintiffs also is attached.

16. Attached hereto as Exhibit 15 is a true and correct copy of a document previously filed in this litigation by the Ministry of Commerce of the People's Republic of China ("MOFCOM") acting as *amicus curiae*, titled China Chamber of Commerce of Medicines & Health Products Importers & Exporters, Publication of Administration and Regulation (2003). A certified English translation filed by MOFCOM also is attached.

17. Attached hereto as Exhibit 16 is a true and correct copy of a document previously filed in this litigation by MOFCOM, titled Measures for Administration over Foreign Trade and Economic Social Organizations, MOFTEC (promulgated on February 26, 1991, effective on February 26, 1991). A certified English translation filed by MOFCOM also is attached.

18. Attached hereto as Exhibit 17 is a true and correct copy of a document produced in this litigation, titled Notification of Adjusting Export Good Classification Catalogue and Strengthening the Regulation of Export Goods, Marketing and Sales, MOFTEC (January 23, 1990). A certified English translation provided by Plaintiffs also is attached.

19. Attached hereto as Exhibit 18 is a true and correct copy of a document produced in this litigation, titled Interim Regulation of Export Goods, MOFTEC (promulgated on December 29, 1992), Order No. 4. A certified English translation provided by Plaintiffs also is attached.

20. Attached hereto as Exhibit 19 is a true and correct copy of a document produced in this litigation, titled Emergency Notice of Holding Vitamin C Export Work Meeting, Foreign Trade Regulation Department of MOFTEC (January 31, 1996). A certified English translation also is attached.

21. Attached hereto as Exhibit 20 is a true and correct copy of a document produced in this litigation, titled MOFTEC's Report to State Council Concerning Current Vitamin C Export Issues and Suggestions for Solutions, Wu Yi (1996), Waijingmao Guanfa No. 185. A certified English translation also is attached.

22. Attached hereto as Exhibit 21 is a true and correct copy of a document previously filed in this litigation by MOFCOM, titled 1997 Notice Relating to Strengthening the Administration of Vitamin C Production and Export (promulgated by MOFTEC on November 27, (1997), Guan Fa No. 664. A certified English translation filed by MOFCOM also is attached.

23. Attached hereto as Exhibit 22 is a true and correct copy of a document previously filed in this litigation by MOFCOM, titled Charter of Vitamin C Subcommittee of China Chamber of Commerce of Medicines and Health Products Importers and Exporters (promulgated on Oct. 11, 1997). A certified English translation filed by MOFCOM also is attached.

24. Attached hereto as Exhibit 23 is a true and correct copy of a document previously filed in this litigation by MOFCOM, titled MOFTEC Approval for Establishing VC Sub-Committee of China Chamber of Commerce of Medicines and Health Products Importers & Exporters (promulgated on March 23, 1998), Ren Lao Zi No. 175. A certified English translation filed by MOFCOM also is attached.

25. Attached hereto as Exhibit 24 is a true and correct copy of a document produced in this litigation, titled Notice Regarding the Distribution of Documents, Including Minutes of the Third Meeting of the Members of the Vitamin C Subcommittee (February 1, 1999), Bates No. NEPG075766.² A certified English translation also is attached.

26. Attached hereto as Exhibit 25 is a true and correct copy of a document produced in this litigation, titled Notes from the Sixth General Meeting of Members of the Vitamin C Branch (December 4, 2000), Bates No. NEPG 042592. A certified English translation provided by Plaintiffs also is attached.

27. Attached hereto as Exhibit 26 is a true and correct copy of a document produced in this litigation, previously marked as deposition exhibit 173, and titled Memorandum, April 13, 2001, Bates No. JJPC0043064-66. A certified English translation provided by Plaintiffs also is attached.

28. Attached hereto as Exhibit 27 is a true and correct copy of a document produced in this litigation, titled Brussels Newsletter, dated September 19, 2001, Issue No. 270, "Our Vitamin C Is In Danger of An Antidumping Suit by the European Union," Bates No. JJPC0049428. A certified English translation also is attached.

² Although Defendants have cited to various documents and transcript excerpts that have been designated "Confidential and Lawyers Only" pursuant to the Stipulated Protective Order (D.E. 133) in the accompanying memorandum of law, and have attached such documents and transcript excerpts to this declaration, Defendants do not intend to waive the confidentiality designation of any other documents or deposition testimony.

29. Attached hereto as Exhibit 28 is a true and correct copy of a document produced in this litigation, which is a fax sent from the German Embassy Commercial Counselor's Office to MOFTEC Department of Treaty and Law, dated November 5, 2001, "Regarding European Union May Bring An Antidumping Action Against Our Vitamin C" (forwarded to the Chamber on November 7, 2001), Bates No. JJPC0055588. A certified English translation also is attached.

30. Attached hereto as Exhibit 29 is a true and correct copy of a document produced in this litigation, titled China Chamber of Commerce of Medicines and Health Products Importers & Exporters, Notice for Distributing Minutes of Meetings by Heads of Vitamin C Manufacturers (November 20, 2001), Yi Shang Zi No. 112, Bates No. JJPC0043068. A certified English translation provided by Plaintiffs also is attached.

31. Attached hereto as Exhibit 30 is a true and correct copy of a document produced in this litigation, titled Document of Jiangsu Jiangshan Pharmaceutical Co. Ltd., Report Regarding Applying To Borrow VC Export License In Advance, Jiang Yao (96) Zi No. 007, January 10, 1996, Bates No. JJPC0055625. A certified English translation provided by Plaintiffs also is attached.

32. Attached hereto as Exhibit 31 is a true and correct copy of a document previously filed in this litigation by MOFCOM, titled 2002 MOFTEC and Customs Notice, Notice Issued by the MOFTEC and the General Administration of Customs for the Adjustment of the Catalogues of Export Products Subject to Price Review by the Customs (promulgated by MOFTEC on March 29, 2002), Mao Fa No. 187. A certified English translation filed by MOFCOM also is attached.

33. Attached hereto as Exhibit 32 is a true and correct copy of a document previously filed in this litigation by MOFCOM, titled Public Notice Issued by MOFCOM and General

Administration of Customs of the PRC, dated November 29, 2003 (2003), No. 36. A certified English translation filed by MOFCOM also is attached.

34. Attached hereto as Exhibit 33 are true and correct copies of excerpts of the transcript of the June 12, 2008 deposition of Feng Zhenying.

35. Attached hereto as Exhibit 34 are true and correct copies of excerpts of the transcript of the July 3, 2008 deposition of Wang Qi.

36. Attached hereto as Exhibit 35 is a true and correct copy of a document produced in this litigation, titled June 2004 Work Summary, Import/Export Department, dated July 4, 2004, Bates No. JJPC0036840. A certified English translation provided by Plaintiffs also is attached.

37. Attached hereto as Exhibit 36 is a true and correct copy of a document produced in this litigation, titled Charter of the Vitamin C Subcommittee of the China Chamber of Commerce of Medicines and Health Products Importers and Exporters (2002), Bates No. JJPC0055589. A certified English translation also is attached.

38. Attached hereto as Exhibit 37 is a true and correct copy of a document produced in this litigation, titled Weekly Work Report (Week 36th) (September 30, 2006), Bates No. NEPG 035282. A certified English translation provided by Plaintiffs also is attached.

39. Attached hereto as Exhibit 38 is a true and correct copy of a document produced in this litigation, referred to as Minutes of November 16, 2005 meeting, Bates No. JJPC0043567. A certified English translation provided by Plaintiffs also is attached.

40. Attached hereto as Exhibit 39 is a true and correct copy of a document produced in this litigation, titled Chamber of Commerce Meeting Minutes (December 23, 2005), Bates No. JJPC0040755. A certified English translation also is attached.

41. Attached hereto as Exhibit 40 is a true and correct copy of the 1995 Antitrust Enforcement Guidelines for International Operations (promulgated by the Department of Justice and Federal Trade Commission, April 5, 1995).

42. Attached hereto as Exhibit 41 is a true and correct copy of an article by Benjamin Busch, titled *Outline on How to Find, Plead, and Prove Foreign Law in U.S. Courts with Sources and Materials*, 2 Int'l L. 437 (1967-1968).

43. Attached hereto as Exhibit 42 are true and correct copies of excerpts of the transcript of the July 28, 2009 deposition of Paula Stern.

44. Attached hereto as Exhibit 43 is a true and correct copy of the Report of Dr. Paula Stern, dated June 5, 2009.

45. Attached hereto as Exhibit 44 is a true and correct copy of a document titled Comments of Bruce Mitchell and Ned Marshak to U.S. Department of Commerce Assistant Secretary for Import Administration, Re: Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries on behalf of Bureau of Free Trade for Imports and Exports (BOFT), 1 June 2004.

46. Attached hereto as Exhibit 45 is a true and correct copy of a document titled Comments of Wang Shichun, Director General BOFT Re: Public Hearings on U.S. China Joint Commission on Commerce and Trade Working Group on Structural Issues on Recognition of China as a Market Economy for Purposes of U.S. Antidumping Law, 19 May 2004.

47. Attached hereto as Exhibit 46 is a true and correct copy of an excerpt from the International Competition Policy Advisory Committee to the Attorney General and the Assistant Attorney General for Antitrust, Final Report (2000).

48. Attached hereto as Exhibit 47 is a true and correct copy of an article by Chad Bown, titled "U.S.-China Trade Conflicts," The Fletcher Forum of World Affairs (2009).

49. Attached hereto as Exhibit 48 is a true and correct copy of the March 29, 2007 Memorandum for David M. Spooner, Assistant Secretary for Import Administration, from Shauna Lee-Alaia and Lawrence Norton, Office of Policy, Import Administration, Re: Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China – Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy.

50. Attached hereto as Exhibit 49 is a true and correct copy of the 2007 Report to Congress on China's Compliance with the WTO by the United States Trade Representative.

51. Attached hereto as Exhibit 50 are true and correct copies of excerpts of the transcript of the June 3, 2004 hearing before the International Trade Administration, Import Administration, Department of Commerce, U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues, testimony of Dai Yunlou.

52. Attached hereto as Exhibit 51 is a true and correct copy of an excerpt from the Antitrust Modernization Commission, Report and Recommendations (April 2007).

53. Attached hereto as Exhibit 52 is a true and correct copy of an article by Eleanor Fox and Dennis Davis, titled *Industrial Policy and Competition – Developing Countries as Victims and Users*, in 2006 Fordham Corp. L. Inst. International Law & Policy 151 (Barry Hawk, ed.).

54. Attached hereto as Exhibit 53 is a true and correct copy of an article by R. Hewitt Pate, titled *What I Heard in the Great Hall of the People – Realistic Expectations of Chinese Antitrust*, 75 Antitrust L.J. 195 (2008).

55. Attached hereto as Exhibit 54 is a true and correct copy of an article by Eleanor Fox, titled *An Anti-Monopoly Law for China – Scaling the Walls of Government Restraints*, 75 Antitrust L.J. 173 (2008).

56. Attached hereto as Exhibit 55 is a true and correct copy of the Anti-Monopoly Law of the People's Republic of China (promulgated by the Standing Committee of the National People's Congress on August 30, 2007 and effective August 1, 2008). An English translation available at <http://www.chinalawandpractice.com/Article/1690083/PRC-Anti-monopoly-Law.html> (last accessed July 21, 2009), also is attached.

57. Attached hereto as Exhibit 56 is a true and correct copy of a document produced in this litigation, titled Report on the Investigation on the Shutdown of Production of Weisheng Pharmaceutical Co., Ltd. (April 19, 2006), Bates No. NEPG037113. A certified English translation provided by Plaintiffs also is attached.

58. Attached hereto as Exhibit 57 are true and correct copies of excerpts of the transcript of the June 19, 2008 deposition of Zhang Yingren.

59. Attached hereto as Exhibit 58 is a true and correct copy of a document produced in this litigation, titled VC Division Meeting Memorandum, 24/2/03, Bates No. JJPC0043573. A certified English translation provided by Plaintiffs also is attached.

60. Attached hereto as Exhibit 59 are true and correct copies of excerpts of the transcript of the oral argument on the motion to dismiss this action, dated June 5, 2007.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: August 31, 2009
New York, New York


Annabelle Chan